



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

HISTORICAL PRESERVATION & HERITAGE COMMISSION

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30 May 2017

Mr. Ajit Pai, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Re: Notice of Proposed Rulemaking and Notice of Inquiry  
Accelerating Wireless Broadband by Removing Barriers to Infrastructure Investment

Dear Chairman Pai:

The Rhode Island Historical Preservation and Heritage Commission (RIHPHC) staff has reviewed the Federal Communications Commission's Notice of Proposed Rulemaking and Notice of Inquiry regarding WT Docket No. 17-79: *Accelerating Wireless Broadband by Removing Barriers to Infrastructure Investment* (the Notice). Reducing the duration of regulatory review of wireless infrastructure is an important effort, however, historical resources must not be sacrificed in doing so. Finding the point at which both can be successfully carried out is of paramount importance.

We have the following comments on the Notice:

- Paragraph 23: This paragraph states, and it is repeated in other locations in the document, that there is an "ongoing evolution in wireless infrastructure deployment towards smaller antennas".

In Rhode Island, the trend that we are seeing is for more, and larger, antennas. Sites that previously had three panel antennas per carrier are almost all increasing to six or more antennas per carrier. The new antennas are larger - typically approximately 8 feet by 12 inches as opposed to the older approximately 6 foot-by-11 inch panels. We understand that these are being augmented by the addition of distributed antenna systems and "small-cell" installations, however, we have not seen the replacement of existing antennas with these smaller units, which the above statement appears to suggest.

- Paragraph 39: In this paragraph, the question is asked, "Does the SHPO [State Historic Preservation Officer] review process duplicate historic preservation review at the local level, particularly when local review is conducted by a Certified Local Government or a governmental authority that issues a Certificate of Appropriateness?"

While there can be overlap between the reviews at the local and SHPO levels, here in Rhode Island, of the 39 cities and towns, less than half are Certified Local Governments (CLGs). Within those CLG communities, local historic district boundaries more often than not differ from the districts that are defined as "historic" under Section 106 of the National Historic Preservation Act (NHPA). Further, most Rhode Island CLGs do not

have jurisdiction over individual historic properties, to which effects are considered under Section 106. Therefore, the SHPO review has a significantly larger number of historic resources under consideration.

Finally, CLG review is conducted by volunteer commission members who may not have the same understanding of the historic resources as the professionals in the SHP Office. Currently, only two CLG communities in Rhode Island have a staff person who meets the National Park Service's Professional Qualification Standards.

- Paragraph 41: This paragraph states, "Verizon also states that providers cannot commence construction of their facilities until after the completion of the historic preservation review process, which they state typically takes several months."

36 CFR Part 800.3(c)(4) of the NHPA states that, "If the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination, the agency official may either proceed to the next step in the process based on the finding or determination or consult with the Council [Advisory Council on Historic Preservation] in lieu of the SHPO/THPO." Our records show that in Rhode Island, almost all requests for review are responded to within 30 days. Reviews may extend beyond 30 days if incomplete information is received from the applicant, or if a proposed project may have adverse effects on historic resources. The review process becomes extended when the applicant delays providing requested information about the project or the applicant does not respond to RIHPHC comments. Particularly in the case of an initial adverse effect determination by the RISHPO, the review process may extend for months as additional information is requested, revisions to designs are made, and plans are resubmitted. Often, large blocks of time elapse while the RIHPHC awaits more information from the project proponent.

- Paragraph 60: This paragraph asks, "Should different time limits apply to different categories of construction, such as new towers, DAS and small cells, and collocations?"

The RIHPHC believes that imposing different time limits on different categories of construction would cause confusion in the process on the SHPO level, and potentially on the carrier and carrier's consultant level. It seems that the best way to achieve shorter review responses is to exclude more types of installations, such as some DAS networks on existing utility poles, from review. We are also interested in the idea of "batching", but as it is not common in Rhode Island submissions, we would need more information on batching procedures in order to assess its potential benefits. Are there FCC-set criteria for how batching should be carried out? We wonder if the FCC should come up with procedures and possibly a form for batching.

- Paragraph 69: This paragraph states, "We seek comment on whether to adopt a similar exclusion [to the Rights of Way exclusion] from Section 106 review for construction or collocation of communications infrastructure in transportation rights of way."

The RIHPHC believes that, as transportation corridors commonly run through historic districts and past individual historic properties, excluding projects from review in these corridors would almost certainly have adverse effects on historic resources.



- Paragraph 73: This paragraph states, “First, we seek comment on whether some or all collocation located between 50 and 250 feet from historic districts should be excluded from Section 106 review.”

The Section 106 regulations and FCC Programmatic Agreements currently provide for the review of collocations if they are within 250 feet of historic districts. Because of the variety of equipment and installation methods, many could be readily visible from between 50 and 250 feet from historic districts. This is particularly so in locations where there is clear line of sight from within the historic district to the communications installation due to a lack of buildings and/or vegetation, or the height of the installation.

- Paragraph 75: This paragraph states, “Finally, we seek comment on whether we can or should exclude from routine historic preservation review certain collocations that have received local approval.”

Much of our response from the question posed in paragraph 39 applies in response to this request for comment, as well. While the CLGs in Rhode Island typically use the Secretary of the Interior’s standards for Historic Preservation as their guidance document, there is enough room for subjective interpretation of the Standards in both the CLG and the SHPO review process. The local commission and the SHPO may place different values on properties or viewsheds that cause them to respond differently to a proposal and therefore respond differently. Additionally, the CLG may not have access to the same information, particularly regarding archaeological issues, that the SHPO has.

- Paragraph 76: This paragraph discusses what constitutes an “undertaking” for the sake of the NHPA.

At the RIHPHC, we believe that the granting of a geographic area license is an undertaking under Section 106 regulations. Further, since the network granted a geographic area license is, by definition, made up of many separate nodes, all of those nodes are indirectly licensed under the area license. Therefore, those individual parts of the network as a whole need to be reviewed.

- Paragraph 77: This paragraph discusses communications sites that are owned by non-licensees, and how they should be reviewed.

Our belief is that, similar to so-called “Twilight Towers”, if a tower was constructed without a license, the opportunity to constructively comment on its effect on historic resources has been foreclosed. Clearly, speculation-built towers are constructed to hold telecommunications equipment. Therefore, they should be reviewed at the time of construction. Parties who build towers should be concerned about the towers’ ability to legally support telecommunications equipment, so they should be cautious about where they build. If a tower was constructed without review due to not having telecommunications equipment proposed at the time of construction, it should not be presumed that collocating on that tower is exempted from review. The increase in visibility of a tower because of the addition of antennas can cause or increase the adverse effect of a tower on historic resources. When we become aware that a tower was not reviewed and is having an adverse effect on historic resources, our only recourse is to not permit that adverse effect to be increased due to the addition of more antennas. Not

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reviewing collocations on towers that were constructed before a telecommunications installation was proposed creates a potentially damaging loophole in the review process.

- Paragraph 82: Discusses “Twilight Towers” and requests comments on whether or not they should be excluded from review for collocation projects. The paragraph also states that, “Moreover, these towers have been standing for 12 years or more and, in the vast majority of cases, no adverse effects have been brought to our attention.”

The construction of a tower or a communications installation without review under Section 106 is, by definition, a violation of the NHPA. The passage of time should not have the effect of causing that violation to disappear. Despite the small area that the RIHPHC oversees, every tower and its review status is not known to us. There may be towers or installations that are having an adverse effect on historic resources of which we are not aware, or about which our requests for changes have not been acted upon. The addition of equipment to an installation may increase the visual appearance and impact of that installation, and thus its impact on an historic viewshed, or may cause or increase adverse physical impacts to an historic resource upon which the installation is constructed.

These comments are provided in accordance with the *Procedures for the Registration and Protection of Historic Properties of the Rhode Island Historical Preservation Commission* and with Section 106 of the National Historic Preservation Act. If you have any questions, please contact Jeffrey Emidy, RIHPHC Deputy Director/Deputy State Historic Preservation Officer.

Very truly yours,



Edward F. Sanderson  
Executive Director  
State Historic Preservation Officer